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No. 01-1053

IN THE SUPREME COURT OF THE UNITED STATES

RONDLE ANDERSON,
Superintendent, Indiana State Prison,

Petitioner-Appellee,

v.

ALAN MATHENEY,

Respondent-Appellant.

Brief in Opposition to Petition for Writ of Certiorari

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QUESTION PRESENTED

When the Court of Appeals determines, and the State concedes, that a federal habeas petitioner has exercised due diligence and has not failed to develop his habeas claims in the state courts, may the Court of Appeals, in its discretion, remand to the federal district court to make factual determinations that the state court did not make, so that the disctrict court can resolve the merits of the claims presented in the habeas petition?

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE 1

REASONS TO DENY THE WRIT 8

I. THIS CASE DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION REGARDING THE PROVISIONS OF 28 U.S.C. § 2254(E)(2) BECAUSE THE COURT OF APPEALS FOUND, AND THE STATE CONCEDES, THAT MATHENEY DID NOT FAIL TO DEVELOP THE FACTUAL BASIS OF HIS CLAIMS IN STATE COURT 8

II. THE STATE'S ASSERTIONS THAT A HEARING IS UNWARRANTED BECAUSE ANY EVIDENCE CONSIDERED AT THAT HEARING WOULD BE CUMULATIVE DOES NOT PRESENT A SUBSTANTIAL OR A RIPE ISSUE FOR REVIEW 9

III. THE STATE'S ASSERTION THAT THE COURT OF APPEALS REMAND SOMEHOW RUNS AFOUL OF THE PROVISIONS OF SECTION 2254(d) OF THE AEDPA ALSO FAILS RAISE A SUBSTANTIAL FEDERAL QUESTION 10

A. As the Indiana Supreme Court did not address Matheney's due process competency claims, § 2254(d) does not apply 10

B. The Court of Appeal's remand for the purpose of determining whether counsel were ineffective for failing to pursue their initial request for a competency hearing is not prohibited by §2254(d) 12

CONCLUSION 14

TABLE OF AUTHORITIES

Cases

Acosta v. Turner, 666 F.2d 949 (5th Cir. 1982) 11
Drope v. Missouri, 420 U.S. 62 (1975) 7, 11
United States v. Franzen, 686 F.2d 1238 (7th Cir. 1982) 7
Gossier v. Welborn, 175 F.3d 504 (7th Cir. 1999) 11
James v. Singletary, 957 F.2d 1592 (11th Cir. 1992) 11
Matheney v. Anderson, 253 F.3d 1025 (7th Cir. 2000) ..... *passim*
Matheney v. Anderson, 60 F.Supp.2d 846 (N.D. Ind. 1999) 2, 5, 13
Matheney v. State, 688 N.E2d 883 (Ind. 1997) 13
McGregor v. Gibon, 248 F.3d 946 (10th Cir. 2001) 11
Oodle v. Woodford, 238 F.3d 1084 (9th Cir. 2001) 11
Pate v. Robinson, 383 U.S. 375 (1966) 7, 11
Pate v. Smith, 637 F.2d 1068 (6th Cir. 1981) 11
Reynold v. Norris, 86 F.3d 796 (8th Cir. 1996) 11
United States v. Auen, 846 F.2d 872 (2nd Cir. 1988) 11
United States v. Giron-Reyes, 234 F.3d 78 (1st Cir. 2000) 11
United States v. Mason, 52 F.3d 1286 (4th Cir. 1995) 11
United States v. Renfroe, 825 F.2d 763 (3rd Cir. 1987) 11
Williams (Michael)v. Taylor, 529 U.S.420 (2000) 8, 9
Williams (Terry) v. Taylor, 529 U.S. 362 (2000) 12, 13

Statutes

28 U.S.C. § 2254(d) 12, 13
28 U.S.C. § 2254(e)(2) 8, 9

STATEMENT OF THE CASE

In 1989, Alan Matheney was charged with murdering his ex-wife, Lisa Bianco, in St. Joseph County Indiana while on a 3 day prison pass. The State requested the death penalty. Defense counsel Lahey and Skodinski were appointed to represent him.

Pre-trial Proceedings

After their initial consultation with Matheney, his counsel learned that Mathaney believed that Bianco was having an affair with the local prosecutor, Michael Barnes, and that the two were the kingpins of a conspiracy to keep him in prison and do him harm. Matheney believed that his prosecution for capital murder was part of the conspiracy because Barnes wanted to forever silence Matheney about the affair. Matheney saw the actions of others, including his attorneys, as an extension of this conspiracy.

Matheney's counsel asked the trial court to appoint two experts to evaluate Matheney's competency to stand trial and his sanity at the time of the offence. Although the trial court granted the motion, the court never ordered the competency evaluation; the appointed psychologists, Drs. Batacan and Berkson, limited their examinations and reports to consideration of whether Matheney was legally insane (*i.e.*, whether he knew the difference between right and wrong) at the time of the offense. *Matheney v. Anderson*, 253 F.3d 1025, 1029-30 (7th Cir. 2000). Neither doctor rendered an opinion as to Matheney's competency to stand trial. *Id.* at 1032.

Subsequently, over the strenuous objection of his attorneys, Matheney filed a *pro-se* motion for a change of venue. At the hearing on the motion, Matheney (not his counsel) told the judge that he wanted the case moved because the conspiracy launched by Bianco and Barnes was preventing him from securing competent counsel, and because defense witnesses were being threatened and harassed. He claimed that he could prove that his family's phones were being tapped and insisted that he had consulted at 10 other lawyers, all of whom, unlike his appointed counsel, were concerned about these alleged phone taps. He also claimed that the police were breaking in to his relatives homes to steal evidence. *Matheney v. Anderson,* 60 F.Supp.2d 846, 850 (N.D. Ind. 1999); *see also Matheney*, 253 F.3d at 1032-33. The court moved the case to Lake County Indiana and a third lawyer, Scott King, was appointed to represent Matheney.

The Trial

Matheney relied on an insanity defense. A psychiatrist, Dr. Helen Morrison, was appointed to assist the defense. At trial, she testified that based on her examination, Matheney suffered from a severe paranoid disorder that impairs his perceptions of reality.

The trial evidence also included: a psychiatrist who had diagnosed Matheney with schizophreniform disorder prior to the offense, testified that Matheney suffered periods of "cognitive confusion" and paranoia; attorneys who had represented Matheney in civil actions described their observations of Matheney's delusional behavior; attorney Michael Scopelitis, who represented Matheney over a seven year period, explained that Matheney's behavior had become increasingly bizarre, paranoid and suicidal, and that he had questioned Matheney's competence to be sentenced on a confinement charge in

1987; and, Matheney's sisters testified that Matheney had exhibited delusional behavior while in jail awaiting trial by requesting copies of nonexistent documents that supposedly revealed the existence of his ex-wife's affair with the local prosecutor and its relation to his continued imprisonment.

Matheney was convicted and sentenced to death.

State post-conviction proceedings

In state habeas proceedings, Matheney alleged, *inter alia*: (1) that he was denied due process of law because was not competent to stand trial; (2) that he was denied due process because the state trial court failed order a *sua sponte* hearing on his competency; and (3) that his counsel were ineffective for failing to raise the issue of his competency at his capital trial. *Matheney,* 253 F.3d at 1035.

Matheney presented the deposition testimony of Dr. Morrison, who testified that based on her evaluation of Matheney at the time of his trial, she had concluded that he was not competent to stand trial. Dr. Morrison explained that due to his mental illness, Matheney could not rationally assist his attorneys or rationally understand the trial. *Matheney*, 253 F.3d at 1036, 1040.

Matheney also presented the deposition testimony of his three trial lawyers. His lawyers agreed that throughout their representation Matheney was obsessed with the idea that Barnes and Bianco were the kingpins of a conspiracy to falsely imprison him and insisted that this should be the basis of his defense. All agreed Matheney did not trust them.

King was lead counsel and by all accounts had the greatest role in preparing the

defense. When asked if Matheney was able to assist in his own defense, King testified that Matheney was of no assistance other than that his writings and conduct supported the insanity defense. King stated that Matheney "mentally and emotionally was not fully equipped." He explained that he attributed Matheney's lack of cooperation "partially because he couldn't because of his mental status. And I believe partially because he did not want to. You know, he's not a trustful person. I mean understandably so. I mean, it was part of his personality and makeup. That's consistent with the diagnosis given by Dr. Morrison."

Lahey testified that Matheney was of no assistance at all regarding any legitimate issue in the case, and that this contributed to the decision to rely on the insanity defense. According to Lahey, Matheney was "confused" at times and "kept popping off in court." Matheney was completely "obsessed" with his conspiracy theories and could not be reasoned with. Matheney sent counsel on wild goose chases and did not trust his lawyers. Lahey testified that Matheney was competent to the extent that Matheney knew "what day it was or who I was." Lahey testified that he did not know whether Matheney was mentally ill and did not feel qualified to make that assessment. He had not consulted with any of the mental health experts prior to trial.

Skodinski admitted to having a very limited role in the case. When asked if he thought Matheney was incompetent he said: "It depends on what you feel is competent. He certainly understood what he was charged with or what evidence to find he was not guilty. In that regard I guess he was competent to assist in his own defense." He admitted that had the psychiatrist told him that she thought Matheney was incompetent he would

have be obliged to request a hearing.

Lahey and Skodinski could not recall filing the motion seeking an evaluation of Matheney's competence. None of the attorneys could recall consulting with Drs. Berkson or Batacan. Neither Lahey nor Skodinski ever spoke with Dr. Morrison. King met with Dr. Morrison for 1 hour prior to trial, but did not discuss her opinion regarding Matheney's competence to stand trial.

Matheney's petition for post-conviction relief was denied. He raised the same three issues regarding his competency on appeal to the Indiana Supreme Court. That court addressed his claim of ineffective of assistance of counsel and denied relief. The Indiana Supreme Court did not address Mathaney's due process competency claims at all.

Federal Habeas Proceedings

In his federal habeas petition, Matheney again alleged: (1) that he was denied due process of law because was not competent to stand trial; (2) that he was denied due process because the state trial court failed to hold a competency hearing *sua sponte* competence to stand trial, and that his counsel were ineffective for failing to raise the issue of his competency at his capital trial. *Matheney,* 253 F.3d at 1038. The State claimed that Matheney had failed to present his due process competency claims in the Indiana Supreme Court, as evidenced by the fact that the Indiana Supreme Court failed to address them. The district court found that Matheney had fairly presented these claims, but that the Indiana State Court had failed to adjudicate them. Thus, the district court determined that the provisions of §2254(d) of the AEDPA do not apply to these claims and that Matheney was entitled to *de novo* review. *Matheney,* 60 F.Supp.2d at 860.

Based on the state court evidence and the court's own prior *ex parte* contact with Matheney, the federal district court determined that Matheney was competent at the time of his trial. *Matheney,* 253 F.3d at 1027. The court further held that Matheney's other claims concerning his competency were without merit. *Id.*

Proceedings in the Court of Appeals

Matheney appealed the district court's decision to the Court of Appeals for the Seventh Circuit. Matheney argued that the district court failed to apply the appropriate law and unduly disregarding portions of the evidence. Matheney asserted that there was a legitimate doubt as to his competency to stand trial and that the district court should not have made a retrospective determination of Matheney's competency or at should not have done so without an evidentiary hearing on his claims.

The State again argued that Matheney's due process competency claims were waived because he failed to present them to the Indiana Supreme Court.

The Seventh Circuit panel reviewed the record in this case and unaminously found that "given that a legitimate question has been raised as to Matheney's competency to stand trial and his lawyer's performance on that issue, we remand the case for an evidentiary hearing." *Matheney,* 253 F.3d at 1025, 1028. The panel specifically ordered that the court hold this hearing to determine: "whether Matheney was competent to stand trial in 1990; . . and [] whether the state trial court was obligated to hold a competency hearing *sua sponte*." *Id.* at 1040-41.

Regarding Matheney's ineffective assistance of counsel claim, the Court emphasized that it was extremely concerned that Matheney's trial counsel (and the trial

court) had failed to follow through on counsel's request for a competency evaluation and expressed doubts as to whether the record could support that this was a reasonable decision. *Id.* at 1032, 1040. The court explained that the record was "at best, unclear" regarding counsel's rationale for this behavior. *Id.* at 1040. Thus the Court also asked that the district court determine "whether Matheney's counsel were ineffective when they failed to pursue the initial request for a competency hearing." *Id.* at 1040-41.

The Court observed that such a hearing was not precluded be 28 U.S.C. § 2254(e)(2) because neither Matheney nor his counsel had failed to develop the facts in support of his claims in state court. *Matheney*, *Id.* at 1039. The Court also found that the Indiana State courts had failed to even address Matheney's due process competency claims, and agreed with the district court that the state court's had failed to afford Matheney a full and fair hearing on his competency claims. *Id.* at 1039.

In ordering the remand, the Court specifically advised that the district court should consider the evidence already in the state court record (e.g., trial counsel's depositions and the various psychiatric evaluations). The Court also advised that the district court could consider "additional information," including "additional psychiatric analysis" should the court decide it would be helpful. *Id.* at 1041 & n. 16.[1]

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[1]In support of the latter, the Court explained that if a habeas petitioner's mental illness is a permanent condition, further psychiatric analysis could be relevant, citing to *United States v. Franzen*, 686 F.2d 1238, 1247 (7th Cir. 1982). In *Franzen*, the court explained that, "[a]lthough there are obvious hazards attendant with retrospective competency hearings, see *Drope v. Missouri*, 420 U.S. 162, 182 (1975) and *Pate v. Robinson*, 383 U.S. 375, 387 (1966), the mere passage of time may not make the effort meaningless, " and went on to order that the district court should conduct such a hearing if it finds "that such a hearing would still be meaningful." *Franzen*, 686 F.2d at 1246-47.

The State's petition for a rehearing and rehearing *en banc* regarding this decision was denied.[2]

REASONS TO DENY THE WRIT

I. THIS CASE DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION REGARDING THE PROVISIONS OF 28 U.S.C. § 2254(E)(2) BECAUSE THE COURT OF APPEALS FOUND, AND THE STATE CONCEDES, THAT MATHENEY DID NOT FAIL TO DEVELOP THE FACTUAL BASIS OF HIS CLAIMS IN STATE COURT

In his petition for a writ of certiorari, The State repeatedly asserts that Matheney has "exercised the required diligence" and "sufficiently developed the factual record" in the state courts to support his competency claims.[3] Nevertheless, The State asserts that the primary reason his petition should be granted is because the Court of Appeal's decision to remand Matheney's case to the district court is inconsistent with the

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[2]Matheney's request for a rehearing, referenced in the Petition for Writ of Certiorari at 5, did not request rehearing regarding the Court's decision relating to Matheney's competency claims.

[3]*See* Pet. at 9("Matheney is not entitled to an evidentiary hearing to determine whether he was competent to stand trial because he exercised the required diligence to make the claim he was not competent."); Pet. at 9 ("Matheney sufficiently developed the factual predicate to this claim in state court to disallow himself and evidentiary hearing."); Pet. at 10 ("Matheney argued and presented evidence at the [state] post-conviction proceedings that he was not competent."); Pet. at 10 ("At each and every stage of this proceeding, Matheney has diligently argued, and when possible, presented evidence that he was not competent [to stand trial]. The factual predicate to Matheney's claim was not only discovered, but litigated, prior to the filing of the petition for a writ of habeas corpus."); Pet. at 13 ("The factual basis of the claim was developed, therefore there is no need for an evidentiary hearing."); Pet. at 14 ("Matheney is not entitled to an evidentiary hearing because the record shows thorough investigation of the factual predicate of this claim in the state proceedings."); Pet. at 16 ("There is sufficient information in the record to determine whether the trial court should have ordered an evaluation [of Matheney's competence] *sua sponte*.").

provisions of 28 U.S.C. § 2254(e)(2) and this Court's decision *Williams v. Taylor*, 529 U.S.420 (2000).

As this Court explained in *Williams*, §2254(e)(2)'s bar on federal evidentiary hearings "applies only to prisoners who have 'failed to develop the factual basis of a claim in State court proceedings'" as a result of "lack of diligence, or some greater fault, attributable to the prisoner or the prisoner's counsel." *Williams*, 529 U.S. at 430-31. Here, where The State does not even argue that Matheney failed to adequately develop the factual basis of his claims in state court, but in fact *agrees* with the Court of Appeal's determination that Matheney did not "fail to develop the factual basis of his claim[s] in State court proceedings," *Matheney*, 253 F.3d at 1038-39, The State has not shown how §2254(e)(2) or this Court's decision in *Williams v. Taylor* are even implicated in this case, let alone "inconsistent" with the Court of Appeal's decision.[4]

II. THE STATE'S ASSERTIONS THAT A HEARING IS UNWARRANTED BECAUSE ANY EVIDENCE CONSIDERED AT THAT HEARING WOULD BE CUMULATIVE DOES NOT PRESENT A SUBSTANTIAL OR A RIPE ISSUE FOR REVIEW

The State also repeatedly asserts that's the Court of Appeals should not have remanded to the district court because the evidence Matheney already presented in state court is sufficient to enable the Court of Appeals to resolve Matheney's claims and any *additional* evidence Matheney seeks to present on remand "will offer no better evidence

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[4]In his second argument, The State further claims that "the issue is whether Matheney satisfied § 2254(e)(2)(A)(ii)." "Only a prisoner who has neglected his rights in state court need satisfy [the conditions of §2254(e)(2)(A)(ii) or (B)]." *Williams*, 529 U.S. at 1490. As the Court of Appeals found, and The State repeatedly concedes, Matheney did not fail to develop his claims in state court and thus the exceptions to §2254(e)(2) are not applicable.

than that already present in the record." Pet. at 11; *see also* Pet. at 14, 16. The State fails to mention that when the Court of Appeals remanded this case, the Court specifically advised that the district court should consider the evidence "already in the [state court] record." *Matheney*, 253 F.2d at 1041. The Court of Appeals also advised that the district court "may well desire to consider any additional information that would assist the court." *Id.* To the extent The State is asserting that the district court should not hear such additional evidence because it would only be cumulative to that which has already been presented, *see* Pet. at 11, The State is free to object on this and any other ground when *and if* the district court decides to it would like to hear additional evidence.

III. THE STATE'S ASSERTION THAT THE COURT OF APPEALS REMAND SOMEHOW RUNS AFOUL OF THE PROVISIONS OF SECTION 2254(d) OF THE AEDPA ALSO FAILS RAISE A SUBSTANTIAL FEDERAL QUESTION

A. As the Indiana Supreme Court did not address Matheney's due process competency claims, § 2254(d) does not apply

The State asserts the Court of Appeals should not have remanded to the district court to determine whether Matheney was incompetent to be tried in 1990 because "the decisions of the Indiana Supreme Court and the district court concerning Matheney's competence were not contrary to or an unreasonable application of this Court's precedent in this area." Pet. at 11.

First, as both the district court and the Court of Appeals found, the Indiana Supreme Court failed to address, and thus did not adjudicate, Matheney's due process competency claim. *Matheney*, 253 F.3d at 1039.

In addition, The state has never before asserted that the Indiana Supreme Court

adjudicated Matheney's due process claims: in both the federal district court and in the Court of Appeals, The State argued (albiet unsucessfully) that Matheney's due process competency claims were "procedurally defaulted" because he failed to present them to the state court. The State specifically claimed that the fact that Indiana Supreme Court did not address these claims supported this argument. Thus, to the extent that The State is now arguing that the Court of Appeals should have applied the provisions of §2254(d) in assessing the merits of Matheney's claim, their failure to present such an argument during the proceedings below should preclude this Court from granting the writ to consider it now.

When a federal habeas petitioner has alleged that his due process rights were violated because he was incompetent to stand trial, the court should: 1) determine whether the evidence demonstrates that there is a legitimate doubt that the petitioner was competent to stand trial; 2) if so, then determine whether a meaningful retrospective competency hearing is possible; and 3) if so, hold such a hearing, or if not, vacate the petitioner's convictions. *Drope v. Missouri*, 420 U.S. 162, 172,183 (1975); *Pate v. Robinson*, 383 U.S. 375, 385-87 (1966). The Court of Appeals reviewed the record in this case and unaminously found that "given that a legitimate question has been raised as to Matheney's competency to stand trial and his lawyer's performance on that issue, we remand the case for an evidentiary hearing." 253 F.3d 1025, 1028. The Court's decision to remand for a hearing to determine whether Matheney was competent to stand trial in

1990 was nothing more than an application of a well established legal standard[5] to the factual record before the court, and thus will have little impact beyond this particular case.

B. The Court of Appeal's remand for the purpose of determining whether counsel were ineffective for failing to pursue their initial request for a competency hearing is not prohibited by §2254(d)

The State also claims that the Court of Appeals should have resolved the merits of Matheney's ineffectiveness claim without a remand, asserting that "the findings of the Indiana Supreme Court should be given deference. 28 U.S.C. §2254(d); *[Terry] Williams*, 529 U.S. [362], 376 [2000]." Pet. at 15.

To the extent that The State means to assert that the Court of Appeals has failed to afford the proper deference to the Indiana Supreme Court's factual findings, The State: (1) fails to identify any instance where this occurred; and, (2) neglects to mention that the state court *failed to make any factual findings* that would be entitled to deference regarding the particular issues that caused the Court of Appeals to remand the case. To the extent that The State means to assert that the Court of Appeals failed to afford the proper deference to the Indiana Supreme Court's *decision* on Matheney's *Strickland*

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[5] This case is certainly not the only case to have ordered or considered a remand under these circumstances. *See, e.g., United States v. Giron-Reyes*, 234 F.3d 78, 83 (1st Cir. 2000); *United States v. Auen*, 846 F.2d 872, 878 (2nd Cir. 1988); *United States v. Renfroe*, 825 F.2d 763, 767 (3rd Cir. 1987); *United States v. Mason*, 52 F.3d 1286, 1293 (4th Cir. 1995); *Acosta v. Turner*, 666 F.2d 949, 956 (5th Cir. 1982); *Pate v. Smith*, 637 F.2d 1068, 1072-73 (6th Cir. 1981); *Gossier v. Welborn*, 175 F.3d 504, 507 (7th Cir. 1999); *Reynold v. Norris*, 86 F.3d 796, 802-03 (8th Cir. 1996); *Oodle v. Woodford*, 238 F.3d 1084, 1089 (9th Cir. 2001); *McGregor v. Gibon*, 248 F.3d 946, 961-62 (10th Cir. 2001); *James v. Singletary*, 957 F.2d 1592, 1570-71 & n. 11 (11th Cir. 1992).

claim under the provisions of 2254(d), The State is urging this Court to review the merits of a decision that Court of Appeals has yet to make.

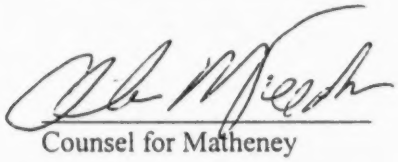
The Court of Appeals was very clear in its opinion that the specific issue pertaining the ineffectiveness claim that it wanted resolved was whether or not there was any reasonable justification for counsel's failure to obtain a competency evaluation after they had initially represented to the trial court that such an evaluation was required. *Matheney*, 253 F.2d at 1032, 1040. The Court of Appeals observed that the state court record (which included the testimony of trial counsel regarding the competency issue) does not appear to support that there was a reasonable explanation for trial counsel's failure to obtain a competency evaluation. *Id.* at 140. The Court of Appeals also observed that the post-conviction testimony of the defense expert stating that based on her evaluation at the time of trial she believed Matheney was not competent to assist in his defense was sufficient to create a legitimate doubt as to Matheney's competency. The state court's fact findings did not address these matters. Although it is unclear, the Indiana Supreme Court's decision appears to presume that the court appointed experts *did* render an opinion regarding Matheney's competency, *see Matheney v. State*, 688 N.E2d 883, 899 (Ind. 1997), even though, as both the district court and the Court of Appeals discuss at length, the record clearly shows that neither expert actually performed a competency evaluation or rendered an opinion regarding Matheney's competency. *Matheney*, 253 F.2d at 1029-1032; *Matheney*, 60 F.Supp.at 849-50. The Indiana Supreme Court's decision ***fails to even mention*** the post-conviction testimony of the defense expert concerning her assessment of Matheney's competency at the time of trial.

Even under the provisions of § 2254(d), the federal habeas court need not defer to a state court decision if the state court determination "was unreasonable insofar as it failed to evaluation the totality of the . . . evidence." *Williams v. Taylor*, 529 U.S. 362, 397-98 (2000); *id.* at 416 (O'Conner, J. concurring) or if the state court decision "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceedings." 28 U.S.C. § 2254(d)(2). Given the state court's failure to make adequate factual findings regarding this issue, and the fact that the case was otherwise being remanded regarding Matheney's due process competency claims, the Court of Appeals remand for a determination of this claim was not an abuse of discretion.

CONCLUSION

For the forgoing reasons, Matheney respectfully requests that this Court deny The State's Petition for a Writ of Certiorari.

Respectfully submitted,



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